

# Proposed Revisions to the Observer Disembark Location Regulatory Amendment

May 2017 – Report to the Observer Advisory Committee

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The Council has initiated an analysis to change the regulatory requirement for where an observer can be disembarked at the end of a fishing trip when the vessel has been delivering to a tender. Under the current regulations, an observer may only be disembarked at a port where is located a processor that holds a valid Federal Processing Permit. The regulation exclusively applies to a fishing trip on which a catcher vessel has been delivering to a tender vessel.

The Council initiated this action in response to public testimony in February 2016, which identified that there is a disproportionate cost for catcher vessels in remote areas to detour to a port with a resident processor only to disembark their observer at the end of a trip, when all catch has otherwise been delivered to a tender. It was noted that the Observer Program currently pays for the observer to fly out to the remote area (usually the vessel’s home port) to begin the trip, but by regulation, the vessel is responsible for disembarking the observer at a port with a processing facility. It is worth recalling that one purpose of restructuring the Observer Program and establishing the observer fee was to more fairly distribute costs among participants, so that vessel owners living in remote areas are not penalized.

In response to the testimony, the Council drafted a purpose and need statement and alternatives which were adopted in staff tasking. In reviewing the issue, however, and considering how best to achieve the Council’s intent, staff recommends that the alternatives be changed. The Council’s action alternative recommended changing the regulatory language to allow an observer to be disembarked either in a community with a resident processor, or in the community from which the observer boarded the vessel for the fishing trip, provided it has regularly scheduled air service. The problem arises with how to define regularly scheduled air service in regulation. Instead, **staff recommends that the action alternative be modified to give the Observer Program the discretion to allow an observer to disembark in an alternate location, in special cases.** It is likely that this is a relatively rare circumstance; the Observer Program knows of only two specific instances since 2013 where vessels have requested the ability to disembark the observer at their port of origin, rather than detouring to the closest port with a resident processor. The Observer Program already has the discretion to determine whether to deploy observers on trips that begin in remote areas, so in effect, this alternative would be maintaining parity with respect to disembarking the observer.

The revised alternatives, as recommended by staff, would be the following:

- Alternative 1:** No Action; on a fishing trip where a catcher vessel is delivering to a tender, the observer must be disembarked in a community with a resident processor possessing a Federal Processing Permit
- Alternative 2:** Maintain the current disembark location requirement but allow the Observer Program to approve, on a case-by-case basis, an alternate disembark location.

<b>Data from ODDS about the number of observed trips that began at a port which does not have a resident processor, from January 2013 through April 2017</b>			
Port of embarkation	Number of trips	Closest port with processor	Approx distance (nm)
Old Harbor	5	Kodiak	96
Port Alexander	3	Sitka	75
Port Armstrong	1	Sitka	80
Port Lions	1	Kodiak	19
Seldovia	25	Homer	16
Tenakee Springs	1	Hoonah	48

## COUNCIL MOTION FROM FEBRUARY 2016

The Council adopted the following problem statement to originate this action in February 2016:

*Resident fishermen in several smaller Alaska communities that are selected to carry an observer often have the observer transported to the community via scheduled air service to board the vessel for the selected “trip”. Current regulations require that the observer, at the conclusion of the trip, be discharged in a community that has a resident processor possessing a Federal Processing Permit (FPP). Many of these communities do not have a resident processor with a FPP. Consequently, fishermen from communities without a resident FPP experience hardship and inequity in that these fishermen must transport the observer long distances, often in adverse weather, and at significant expense – both in time and money to a port different from the port where the observer started the trip. If an observer is able to travel to a community to board an observed vessel for a trip, the observer should also be able to be discharged in the same community and travel from the community at the end of the trip.*

The Council’s original alternatives, as adopted in February 2016:

**Alternative 1:** No Action

**Alternative 2:** An observer may be discharged in a community with a resident processor possessing a Federal Processing License or in the community with regularly scheduled air service from which the observer boarded the vessel for a “trip”.

**Option:** An observer may be discharged in a community with a resident processor possessing a Federal Processing License or a community with regularly scheduled air service.

The regulations would need to define “regularly scheduled air service” for the purposes of this action.

## CURRENT REGULATIONS

This action would require a **regulatory change** relative to where an observer can be discharged at the end of a fishing trip as defined in **50 CFR 679.2**.

**50 CFR 679.2** Fishing trip means:

(3) Groundfish and Halibut Observer Program. With respect to subpart E of this part, one of the following periods:

- (i) For a catcher vessel delivering to a shoreside processor or stationary floating processor, the period of time that begins when a catcher vessel departs a port to harvest fish until the offload or transfer of all fish from that vessel.
- (ii) For a catcher vessel delivering to a tender vessel, the period of time that begins when a catcher vessel departs a port to harvest fish **until the vessel returns to a port in which a shoreside processor or stationary floating processor with a valid FPP is located**.

**50 CR 679.51(a)(1)(ii)(C)(5)** Observer coverage duration. If selected, **a vessel is required to carry an observer for the entire fishing trip**.

- (i) A fishing trip selected for observer coverage may not begin until all previously harvested fish has been offloaded and an observer is aboard the vessel.
- (ii) An observer may not be transferred off a catcher vessel until the observer confirms that all fish from the observed fishing trip are offloaded.
- (iii) A vessel must make a minimum of one delivery to a tender vessel to be subject to paragraph (3)(ii) of the fishing trip definition at §679.2.